

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

STATE OF KANSAS,
ex rel. **DEREK SCHMIDT, in his official capacity**
as Attorney General of the State of Kansas,

Plaintiff,

v.

**UNITED STATES DEPARTMENT
OF DEFENSE,**

Defendant.

No. 16-CV-_____

COMPLAINT

Plaintiff State of Kansas, by and through Kansas Attorney General Derek Schmidt, brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.* Kansas seeks an order of this Court requiring Defendant United States Department of Defense to provide records containing important information regarding the President’s unlawful plan to transfer detainees held by the Defendant at the Guantánamo Bay Naval Base (“Guantanamo detainees”) to the U.S. mainland. Kansas was one of three publicly-identified possible locations for the President’s planned unlawful transfer. In support of its Complaint, Kansas alleges as follows:

INTRODUCTION

Congress repeatedly has prohibited the use of federal funds to “transfer, release, or assist in the transfer or release” of Guantanamo detainees to the United States. Congress also has prohibited the expenditure of federal funds to “construct or modify” any facility in the United States for the purpose of housing Guantanamo detainees. Yet in 2015, the Defendant sent survey

teams to Leavenworth, Kansas to assess Fort Leavenworth's potential for housing Guantanamo detainees.

In December 2015, Kansas, by and through its Attorney General Derek Schmidt, submitted a FOIA request to the Office of the Secretary of Defense and Joint Staff ("OSD/JS"), which is a component of the Defendant. The Kansas request sought, among other things, all documents that discuss or relate to any expenditure of federal funds, including travel or personnel costs, related to surveying potential transfer sites on the U.S. mainland. The Office of Freedom of Information for OSD/JS ("Defendant's FOIA office") has admitted to Kansas that in response to Kansas's request it has compiled this information, and since at least April 2016, has had a document that contains the information Kansas seeks. The Defendant has yet to provide that document (or any other document within the scope of the request) to Kansas. The Defendant has not even given a firm date for making the document (which Defendant has admitted is already compiled and exists) available to Kansas, and has left open the option of substantially delaying its response, which would undermine the usefulness of the information Kansas seeks.

This action seeks declaratory and injunctive relief requiring the Defendant to immediately provide Kansas the document containing information about the Defendant's survey teams, promptly provide Kansas the other records it has requested, and grant Kansas's request for a public interest fee waiver.

I. PARTIES

1. Plaintiff State of Kansas is one of the fifty sovereign States of the United States.
2. Defendant United States Department of Defense is an Executive Branch Department of the United States government and is an agency within the meaning of 5 U.S.C.

§ 552(f)(1). The Office of the Secretary of Defense and Joint Staff is a component of the Defendant.

II. JURISDICTION AND VENUE

3. This Court has both subject matter and personal jurisdiction under 5 U.S.C. § 552(a)(4)(B). The Court also has subject matter jurisdiction under 5 U.S.C. §§ 701-06 and 28 U.S.C. § 1331.

4. Venue is proper in this District under 5 U.S.C. § 552(a)(4)(B).

III. FACTUAL ALLEGATIONS

5. The allegations in paragraphs 1-4 are incorporated herein.

A. The President's plan to close the detention facilities at the Guantánamo Bay Naval Base and unlawfully transfer remaining detainees to the U.S. mainland.

6. Closing the detention facilities at the Guantánamo Bay Naval Base ("Guantanamo") has been one of President Obama's self-declared top priorities. On his second day in office the President issued an Executive Order aimed at reducing the population of Guantanamo detainees and "promptly" closing Guantanamo, even if that meant transferring dangerous detainees to detention facilities in the United States. Exec. Order No. 13,492, 74 Fed. Reg. 4897 (Jan. 22, 2009).

7. Congress, however, has prohibited the use of federal funds to transfer, or assist in the transfer of, Guantanamo detainees to the United States.

8. The National Defense Authorization Act for Fiscal Year 2014 ("2014 NDAA") and the National Defense Authorization Act for Fiscal Year 2015 ("2015 NDAA"), which covered the time period relevant to the Kansas request, imposed the following prohibition on the use of federal funds:

No amounts authorized to be appropriated or otherwise made available to the Department of Defense may be used . . . to transfer, release, or assist in the transfer or release to or within the United States, its territories, or possessions of Khalid Sheikh Mohammed or any other detainee who—

(1) is not a United States citizen or a member of the Armed Forces of the United States; and

(2) is or was held on or after January 20, 2009, at United States Naval Station, Guantanamo Bay, Cuba, by the Department of Defense.

2014 NDAA, Pub. L. 113-66, § 1034, 127 Stat. 672, 851 (2013); 2015 NDAA, Pub. L. 113-291, § 1033, 128 Stat. 3292, 3492 (2014).

9. The 2014 NDAA and 2015 NDAA also prohibited the use of federal funds to “construct or modify any facility in the United States . . . to house any [Guantanamo detainees] . . . unless authorized by Congress.” 2014 NDAA, Pub. L. 113-66, § 1033, 127 Stat. at 850; 2015 NDAA, Pub. L. 113-66, § 1032, 127 Stat. at 851.

10. The National Defense Authorization Act for Fiscal Year 2016 (2016 NDAA), the 2016 Consolidated Appropriations Act, and other recent appropriations bills included similar restrictions. *See* Pub. L. No. 114-92, §§ 1031, 1032, 129 Stat. 726, 968 (2015) (2016 NDAA); Pub. L. No. 114-113, § 8103, 129 Stat. 2242, 2376 (2015) (2016 Consolidated Appropriations Act); *see also, e.g.*, Pub. L. No. 114-53 § 101 (2015); Pub. L. No. 114-4, § 533 (2015); Pub. L. No. 113-235, Div. B §§ 528, 529, Div. C §§ 8112, 8113, Div. I § 512 (2014); Pub. L. No. 113-203 (2014); Pub. L. No. 113-202 (2014); Pub. L. No. 113-164 § 101 (2014); Pub. L. No. 113-76, Div. B, §§ 528, 529 (2014).

11. Nevertheless, in 2015 and possibly earlier, Defendant sent survey teams to potential detention locations in the United States to determine their suitability for housing Guantanamo detainees. One of those sites was Fort Leavenworth in Leavenworth, Kansas, where the U.S. Disciplinary Barracks is located.

12. In November 2015, the State learned that the President was on the verge of taking illegal executive action to transfer Guantanamo detainees to one or more facilities in Kansas, Colorado, and/or South Carolina.

13. The President has not yet taken this illegal action, but in February 2016 he submitted a plan for closing Guantanamo Bay to Congress that includes transferring Guantanamo detainees to the U.S. mainland. The plan states that Defendant's survey teams identified 13 potential facilities for housing the detainees in the United States.

B. Kansas submitted a FOIA request seeking records related to the President's unlawful plan to transfer Guantanamo detainees to the U.S. mainland.

14. On December 16, 2015, Kansas submitted a FOIA request to Defendant's FOIA office (attached as Exhibit A). Kansas sought all records between December 26, 2013 and December 16, 2015 that "discuss or in any way relate to":

- (a) the implementation of Executive Order 13492 or Executive Order 13493, of January 22, 2009, concerning the disposition of individuals detained at the Guantanamo Bay Naval Base and the closure of the detention facilities located there;
- (b) the transfer or potential transfer to the United States mainland of individuals currently detained at the Guantanamo Bay Naval Base;
- (c) site visits to military bases or detention facilities in Kansas or any other State as part of, or related to, an effort to find a facility to house individuals currently detained at the Guantanamo Bay Naval Base;
- (d) the modification or construction of any military base or federal or state-owned prison, penitentiary, or other detention facility for the purpose of housing individuals currently detained at the Guantanamo Bay Naval Base;
- (e) any assessment of the suitability of any location at Fort Leavenworth, Kansas, or elsewhere within the State of Kansas, as a site for potentially housing individuals currently detained at the Guantanamo Bay Naval Base;
- (f) surveys or questionnaires regarding potential transfer sites on the United States mainland for individuals currently detained at the Guantanamo Bay Naval Base;

(g) any expenditures of funds related to (a) through (f), including any travel or personnel costs related to surveying potential transfer sites on the United States mainland for individuals currently detained at the Guantanamo Bay Naval Base;

(h) the legal basis for any violation of the funding restrictions Congress has imposed.

Ex. A at 1-2.

15. Kansas also requested a public interest fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii) and 32 C.F.R. § 286.28(d)(3)(i)(A)-(D). Kansas explained that the President's plan to bring dangerous Guantanamo detainees to the U.S. mainland was an issue of great public concern and that the State intended to make all information it obtained through its FOIA request available to the public so that the public, including state and federal lawmakers, would be aware of the President's plan. Ex. A at 2-3.

C. At the Defendant's suggestion, Kansas agreed to narrow its request in order to expedite the processing of its request.

16. On December 23, 2015, Defendant's FOIA office responded that it would not be able to comply with the Kansas request within the statutory 20-day time period. 5 U.S.C. § 552(a)(6)(A). The response, attached as Exhibit B, relied on empty, boilerplate excuses—

(a) the need to search for and collect records from a facility geographically separated from this office; (b) the potential volume of records responsive to [the] request; and (c) the need for consultation with one or more other agencies or DoD components having a substantial interest in either the determination or the subject matter of the records.

Ex. B at 2.

17. Defendant's FOIA office also stated that a decision on Kansas's fee waiver request would not be made until "the conclusion of the search and assessment of responsive records." Ex. B at 2.

18. On January 14, 2016, Defendant's FOIA office proposed that Kansas limit the scope of items (a) and (g) of its request. *See* Ex. C at 2.

19. With respect to item (a), Defendant's FOIA office asked Kansas to limit the scope of its request to any materials that "discuss the relocation of individuals detained at [Guantanamo] to the State of Kansas due to closure of the detention facilities at [Guantanamo]." Ex. C at 2.

20. With respect to item (g), "[t]o save time and satisfy [the Kansas] request," Defendant's FOIA office proposed the following modification:

OSD will prepare a document that lists the following information as it applies to the survey of potential [Guantanamo] detainee transfer sites on the United States mainland: the location of such surveys as well as the total cost of travel, per diem, and incidental expenses for all Department of Defense personnel conducting these surveys.

Ex. C at 2.

21. Defendant's FOIA office emphasized that by "re-scoping [the Kansas] request [it] will take less time to conduct a search and provide a response." Ex. C at 2.

22. On February 8, 2016, Kansas agreed to limit the scope of items (a) and (g) along the lines of what Defendant's FOIA office proposed in order to expedite the processing of its request. *See* Ex. C at 1-2.

D. The Defendant failed to process the Kansas request by the estimated completion date of April 15, 2016.

23. After agreeing to limit the scope its request, Kansas asked Defendant's FOIA office for an alternative time frame for processing the Kansas request since the Defendant was unable to comply with the statutory 20-day period. On March 2, 2016, Defendant's FOIA office provided an estimated completion date of April 15, 2016.

24. Kansas did not receive a response from Defendant's FOIA office by April 15, 2016. The following week, Kansas requested an update of the status of its request.

25. On April 21, 2016, Defendant's FOIA office responded that the document it agreed to produce to comply with item (g) of the Kansas request (as modified by agreement)—the document that compiles information about the survey teams—had been created but needed unspecified “additional coordination.” Ex. D.

26. Yet Defendant's FOIA office extended its estimated completion date by seven months to November 15, 2016—after the next presidential election, just two months before President Obama will leave office, and likely too late for the information to be useful.

27. Defendant's FOIA office stated that the document referenced in item (g) could be provided “ahead of the remainder of [the Kansas] request,” but it gave no hint as to when that might be. Ex. D.

28. Defendant's FOIA office provided no real explanation for the dramatic change in the time frame for complying with the Kansas request, reciting the same boilerplate reasons it stated for extending the deadline the first time:

(a) the need to search for and collect records from a facility geographically separated from this Office; (b) the potential volume of records responsive to your request; and (c) the need for consultation with one or more other agencies or DoD components having a substantial interest in either the determination or the subject matter of the records.

Ex. D.

29. On April 27, 2016, Kansas responded, in part, as follows:

Because OSD's response to paragraph (g) has been completed by OSD and only needs “further coordination,” it is unclear how any of these circumstances provide reasons for delaying OSD's response to the State's re-scoped paragraph (g). The State narrowed its request with respect to paragraph (g) in order to receive a timely response. The State respectfully requests that it receive OSD's response to

paragraph (g), as re-scoped, on or before May 15, 2016. No unusual circumstances would support delay beyond that time.

The State also requests more specific reasons for why the remainder of its request will take an additional seven months to complete.

Ex. E at 1.

30. Kansas received no response from Defendant's FOIA office by May 15, 2016, and has received no response to date.

31. An agency can extend the time for responding to a FOIA request "only to the extent reasonably necessary to the proper processing of the particular requests." 5 U.S.C. § 552(a)(6)(B)(ii).

32. None of the reasons the Defendant has given justify the Defendant's continuing and inexplicable delay in making available to Kansas the document referenced in item (g), which, by the Defendant's own admission, already has been created.

33. Defendant's FOIA office has yet to decide the Kansas public interest fee waiver request.

IV. CLAIMS FOR RELIEF

COUNT ONE

Failure to Produce the Document Requested in Item (g), as Modified by Agreement

34. The allegations in paragraphs 1-33 are incorporated herein.

35. The Defendant is unlawfully withholding the document requested in item (g) of the Kansas FOIA request, as modified by agreement—the document that "lists the following information as it applies to the survey of potential [Guantanamo] detainee transfer sites on the United States mainland: the location of such surveys as well as the total cost of travel, per diem, and incidental expenses for all Department of Defense personnel conducting these surveys." Ex. C. *See* 5 U.S.C. § 552.

36. The Kansas FOIA request reasonably described the records requested and was made in accordance with published rules and procedures.

37. The Defendant proposed, and Kansas agreed, to limit the scope of the Kansas request in order to expedite the processing of that request.

38. April 15, 2016 was set as an alternative time frame for processing the so-modified Kansas request.

39. Even though Defendant's FOIA office has prepared the document referenced in item (g), as modified by agreement, the Defendant has failed to comply with the April 15, 2016 deadline, has yet to provide the document to Kansas, and has said it will not commit to providing the document any sooner than November 15, 2016.

40. Defendant's failure to provide Kansas the document requested in item (g), as modified by agreement, violates the FOIA, 5 U.S.C. §§ 552, *et seq.*, *see also, e.g.*, 5 U.S.C. §§ 552(a)(3)(A), (a)(6), and Defendant's corresponding regulations, *see* 32 C.F.R. Part 286.

COUNT TWO
Failure to Produce All Other Records Requested

41. The allegations in paragraphs 1-40 are incorporated herein.

42. The Kansas FOIA request reasonably described the records requested and was made in accordance with published rules and procedures.

43. Defendant proposed, and Kansas agreed, to limit the scope of the Kansas request in order to expedite the processing of that request.

44. April 15, 2016 was set as an alternative time frame for processing the so-modified Kansas request.

45. Defendant failed to comply with the April 15, 2016 deadline and now has extended the deadline another seven months, to November 15, 2016, with no additional explanation for the substantial delay.

46. Defendant's failure to provide Kansas the records Kansas requested in its modified request violates the FOIA, 5 U.S.C. §§ 552, *et seq.*, *see also, e.g.*, 5 U.S.C. §§ 552(a)(3)(A), (a)(6), and Defendant's corresponding regulations, *see* 32 C.F.R. Part 286.

COUNT THREE **Failure to Grant Public Interest Fee Waiver Request**

47. The allegations in paragraphs 1-46 are incorporated herein.

48. Kansas has demonstrated it is entitled to a waiver of fees associated with processing its FOIA request because the information sought in the FOIA request is in the public interest, will significantly contribute to the public's understanding of Defendant's operations and activities, and will not be used to further any commercial interest. 5 U.S.C. § 552(a)(4)(A)(iii); 32 C.F.R. § 286.28(d).

49. Defendant's failure to grant the Kansas request for a public interest fee waiver violates the FOIA, 5 U.S.C. § 552(a)(4)(A)(ii)-(iii), and Defendant's own regulations, 32 C.F.R. § 286.28(d).

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff State of Kansas respectfully requests the following relief from this Court:

A. A declaratory judgment that Defendant has violated the FOIA, 5 U.S.C. § 552, *et seq.*;

B. An injunction requiring the Defendant to immediately provide Kansas a copy of the document it requested in item (g), as modified by agreement—the document that “lists the

following information as it applies to the survey of potential [Guantanamo] detainee transfer sites on the United States mainland: the location of such surveys as well as the total cost of travel, per diem, and incidental expenses for all Department of Defense personnel conducting these surveys”;

C. An injunction requiring the Defendant to promptly provide Kansas all the records requested in its December 2015 FOIA request, as modified, in their entirety;

D. An injunction prohibiting the Defendant from charging Kansas any fees for the processing the request;

E. An order awarding Kansas the costs and reasonable attorneys’ fees incurred in this action, *see* 5 U.S.C. 552 § (a)(4)(E); and

F. Such other relief as the Court may deem just and proper.

VI. DESIGNATION OF PLACE OF TRIAL

Kansas designates Topeka as the place of trial.

Respectfully submitted,

OFFICE OF ATTORNEY GENERAL
DEREK SCHMIDT

By: s/ Derek Schmidt

Derek Schmidt, KS Sup. Ct. No. 17781
Kansas Attorney General
Jeffrey A. Chanay, KS Sup. Ct. No. 12056
Chief Deputy Attorney General
Stephen R. McAllister, KS Sup. Ct. No. 15845
Solicitor General of Kansas
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Attorneys for Plaintiff State of Kansas

Exhibit A



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
ATTORNEY GENERAL

December 16, 2015

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VIA FACSIMILE

FREEDOM OF INFORMATION ACT REQUEST

Stephanie Carr
FOIA Contact
OSD/JS FOIA Requester Service Center
Office of Freedom of Information
Office of the Secretary and Joint Staff
Department of Defense
1155 Defense Pentagon
Washington, DC 20301-1155
Fax: (571) 372-0500

Re: FOIA REQUEST

Dear Ms. Carr:

This is a request under the Freedom of Information Act (5 U.S.C. § 552, as amended).

By this letter the State of Kansas, by and through the Office of the Kansas Attorney General, hereby requests any and all documents (including any and all written or electronic correspondence or other records, financial records in any form, audiotapes, electronic records, videotapes, photographs, telephone messages, voice mail messages, e-mails, facsimiles, daily agendas and calendars, information about meetings and/or discussions, whether in-person or over the telephone, agendas, minutes and a list of participants for those meetings and/or discussions, and transcripts and notes of any such meetings and/or discussions) from December 26, 2013, to the date of this letter that discuss or in any way relate to:

- (a) the implementation of Executive Order 13492 or Executive Order 13493, of January 22, 2009, concerning the disposition of individuals detained at the Guantanamo Bay Naval Base and the closure of the detention facilities located there;
- (b) the transfer or potential transfer to the United States mainland of individuals currently detained at the Guantanamo Bay Naval Base;

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- (c) site visits to military bases or detention facilities in Kansas or any other State as part of, or related to, an effort to find a facility to house individuals currently detained at the Guantanamo Bay Naval Base;
- (d) the modification or construction of any military base or federal or state-owned prison, penitentiary, or other detention facility for the purpose of housing individuals currently detained at the Guantanamo Bay Naval Base;
- (e) any assessment of the suitability of any location at Fort Leavenworth, Kansas, or elsewhere within the State of Kansas, as a site for potentially housing individuals currently detained at the Guantanamo Bay Naval Base;
- (f) surveys or questionnaires regarding potential transfer sites on the United States mainland for individuals currently detained at the Guantanamo Bay Naval Base;
- (g) any expenditures of funds related to (a) through (f), including any travel or personnel costs related to surveying potential transfer sites on the United States mainland for individuals currently detained at the Guantanamo Bay Naval Base;
- (h) the legal basis for any violation of the funding restrictions Congress has imposed. *See, e.g.*, National Defense Authorization Act for Fiscal Year 2014, Pub. L. 113-66, §§ 1033, 1034 (enacted Dec. 26, 2013); Consolidated Appropriations Act, 2014, Pub. L. 113-76, Div. B., §§ 528, 529 (enacted Jan. 15, 2014), extended through December 17, 2014, by Pub. L. 113-164, Pub. L. 113-202, and Pub. L. 113-203; Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113-235, Div. B §§ 528, 529 (enacted Dec. 16, 2014), extended through December 16, 2015, by Pub. L. 114-53 and Pub. L. 114-53; National Defense Authorization Act for Fiscal Year 2015, Pub. L. 113-291, §§ 1033, 1034 (enacted Dec. 19, 2014); National Defense Authorization Act for Fiscal Year 2016, Pub. L. 114-92, §§ 1031, 1032 (enacted Nov. 25, 2015).

Request for Public Interest Fee Waiver

We respectfully request that you waive any applicable fees since disclosure is in the public interest. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 32 C.F.R. §§ 286.28(d)(3)(i)(A)-(D), 1900.13(b)(2). Specifically, the records requested are “likely to contribute significantly to public understanding of the operations or activities of the government” and the State has no commercial interest in their disclosure—the State’s interest is to facilitate and promote the public interest. *See Id.*

FOIA’s fee waiver provision imposes a non-discretionary duty to provide documents without any charge if the disclosed information satisfies a two-prong test. *See* 5 U.S.C. § 552(a)(4)(A)(iii) (“Documents *shall* be furnished without any charge or at a [reduced] charge . . .”). First, the disclosed information must be likely to significantly contribute to public understanding of governmental operations and activities. 5 U.S.C. § 552(a)(4)(A)(iii). Second, the disclosed

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information cannot be primarily in the commercial interests of the requester. *Id.* This test is intended to be liberally construed in favor of waivers for noncommercial requesters. *Forest Guardians v. DOI*, 416 F.3d 1173, 1178 (10th Cir. 2005). It “should not be interpreted to allow federal agencies to set up roadblocks to prevent noncommercial entities from receiving a fee waiver.” *W. Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1039 (D. Idaho 2004).

The President has stated that he intends to close the detention facility at the Guantanamo Bay Naval Base and bring to the United States mainland the detainees housed there. It has been widely reported that U.S. Disciplinary Barracks at Fort Leavenworth is one of the sites that a team led by a U.S. Department of Defense official has surveyed as a possible location for housing Guantanamo detainees. This is a matter of tremendous public concern, not just in Leavenworth, Kansas, but across the State and the Country. The intention of FOIA is to “ensure an informed citizenry, vital to the functioning of a democratic society, needed to . . . hold the governors accountable to the governed.” *Natural Res. Def. Council v. EPA*, 581 F. Supp. 2d 491, 496 (S.D.N.Y. 2008) (quoting *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978)). That is precisely how the State of Kansas intends to use the records it seeks.

Specifically, the State of Kansas intends to inform all residents of Kansas and the United States regarding the plan to bring Guantanamo detainees to the United States mainland. It will do so by making the information available on the website of the Office of the Kansas Attorney General and in other manners determined to be in the public interest. The State of Kansas will also use the records to educate state and federal lawmakers regarding the activities of the Department of Defense, Department of the Army, Department of the Navy, and the Department of Justice in connection with the potential transfer of individuals detained at the Guantanamo Bay Naval Base to a facility or facilities located on the United States mainland.

The records will provide invaluable information to these lawmakers as they consider future changes to Guantanamo Bay Naval Station and the effect those changes may have on the safety and security of all Americans as well as any potential future changes to, or in relation to, Fort Leavenworth, Kansas. The records will also significantly enhance the public’s understanding of any planned operations and activities, and ensure that the public has the information necessary to determine whether the proposed transfer of military detainees is within the public interest.

The State has no intention of using the information disclosed for financial gain. If for some reason the fee waiver request is denied, while reserving any right to appeal such a decision, the State of Kansas is willing to pay \$100.00 to cover costs of document search and duplication.

In the event that access to any portion of the requested records is denied, FOIA requires that that the portions of a requested file that are not exempted from release must be disclosed. *See* 5 U.S.C. § 552(b). We therefore request that the State of Kansas be provided with all non-exempt portions that are reasonably segregable from exempt material. *See id.* We further request that you describe the deleted material in detail and specify the statutory basis for the denial as well as your reasons for believing that the alleged statutory justification applies in this instance. Please separately state your reasons for not invoking your discretionary powers to release the requested

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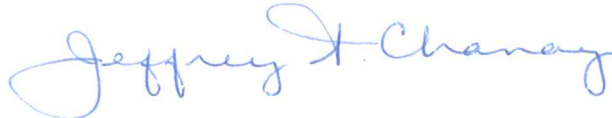
documents in the public interest. Such statements will be helpful in deciding whether to appeal an adverse determination and in formulating arguments in case an appeal is taken.

We request that access to the requested records be granted within the statutory twenty working days from the date of receipt. *See* 5 U.S.C. § 552(a)(6)(A); 32 C.F.R. § 286.4(d)(1). Failure to respond in a timely manner shall be viewed as a denial of this request and the requesters may immediately file an administrative appeal. *See* 5 U.S.C. § 552(a)(6)(C)(i).

Thank you in advance for your prompt reply. Should you need to talk by telephone as to any matter related to this request, I may be reached at (785) 296-2215.

Sincerely,

OFFICE OF KANSAS ATTORNEY GENERAL
DEREK SCHMIDT

A handwritten signature in blue ink that reads "Jeffrey A. Chanay". The signature is written in a cursive style with a large, looping initial "J".

Jeffrey A. Chanay
Chief Deputy Attorney General

Exhibit B



**DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

23 DEC 2015

Ref: 16-F-0329

Mr. Jeffrey Chanay
State of Kansas, Office of the Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, KS 66612-1597

Dear Mr. Chanay:

This is in response to your enclosed December 16, 2015, Freedom of Information Act (FOIA) request for, "any and all documents (including any and all written or electronic correspondence or other records, financial records in any form, audiotapes, electronic records, videotapes, photographs, telephone messages, voice mail messages, e-mails, facsimiles, daily agendas and calendars, information about meetings and/or discussions, whether in-person or over the telephone, agendas, minutes and a list of participants for those meetings and/or discussions, and transcripts and notes of any such meetings and/or discussions) from December 26, 2013, to the date of this letter that discuss or in any way relate to:

- (a) the implementation of Executive Order 13492 or Executive Order 13493, of January 22, 2009, concerning the disposition of individuals detained at the Guantanamo Bay Naval Base and the closure of the detention facilities located there;
- (b) the transfer or potential transfer to the United States mainland of individuals currently detained at the Guantanamo Bay Naval Base;
- (c) site visits to military bases or detention facilities in Kansas or any other State as part of, or related to, an effort to find a facility to house individuals currently detained at the Guantanamo Bay Naval Base;
- (d) the modification or construction of any military base or federal or state-owned prison, penitentiary, or other detention facility for the purpose of housing individuals currently detained at the Guantanamo Bay Naval Base;
- (e) any assessment of the suitability of any location at Fort Leavenworth, Kansas, or elsewhere within the State of Kansas, as a site for potentially housing individuals currently detained at the Guantanamo Bay Naval Base;
- (f) surveys or questionnaires regarding potential transfer sites on the United States mainland for individuals currently detained at the Guantanamo Bay Naval Base;

- (g) any expenditures of funds related to (a) through (f), including any travel or personnel costs related to surveying potential transfer sites on the United States mainland for individuals currently detained at the Guantanamo Bay Naval Base;
- (h) the legal basis for any violation of the funding restrictions Congress has imposed. *See, e.g.,* National Defense Authorization Act for Fiscal Year 2014, Pub. L. 113-66, §§ 1033, 1034 (enacted Dec. 26, 2013); Consolidated Appropriations Act, 2014, Pub. L. 113-76, Div. B., §§ 528, 529 (enacted Jan. 15, 2014), extended through December 17, 2014, by Pub. L. 113-164, Pub. L. 113-202, and Pub. L. 113-203; Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113-235, Div. B §§ 528, 529 (enacted Dec. 16, 2014), extended through December 16, 2015, by Pub. L. 114-53 and Pub. L. 114-53; National Defense Authorization Act for Fiscal Year 2015, Pub. L. 113-291, §§ 1033, 1034 (enacted Dec. 19, 2014); National Defense Authorization Act for Fiscal Year 2016, Pub. L. 114-92, §§ 1031, 1032 (enacted Nov. 25, 2015)."

Your request was received in this office on December 16, 2015, and assigned FOIA case number 16-F-0329. We ask that you use this number when referring to your request.

In your FOIA request, you asked for a waiver of assessable fees. Please be aware that decisions to waive or reduce fees are made on a case-by-case basis and we will make a determination in regards to your fee waiver request at the conclusion of the search and assessment of responsive records, should they exist. For fee purposes, we determined that you should be placed in the "other" fee category for the processing of your FOIA request. The "other" fee category affords you two hours of search time and 100 pages of duplication free of charge. You have provided a willingness to pay statement of up to \$100.00. A search equal up to the amount you have stated in addition to your free two hours will be conducted should we deny your request for a fee waiver.

This FOIA office only processes requests for the Office of the Secretary of Defense (OSD) and the Joint Staff (JS). There is no central FOIA processing point for records for the entire Department of Defense (DoD). FOIA processing is decentralized and delegated to those officials of the Military Departments and various DoD Components who generate and/or maintain the records being sought or reviewed. For future reference, you may find links to the non-OSD/JS DoD FOIA Requester Service Centers on our website: <http://www.dod.mil/pubs/foi/>.

You should know that although we have already begun processing your request, we will not be able to respond to your request within the FOIA's 20-day statutory time period as there are unusual circumstances which impact our ability to quickly process your request. These unusual circumstances are (a) the need to search for and collect records from a facility geographically separated from this office; (b) the potential volume of records responsive to your request; and (c) the need for consultation with one or more other agencies or DoD components having a substantial interest in either the determination or the subject matter of the records. For these reasons, your request has been placed in our complex processing queue and will be worked in the order the request was received. Our current administrative workload is 1,564 open requests. We

regret the anticipated delay in responding to your request and your continued patience is appreciated.

If you have any questions, please contact the Action Officer assigned to your request, Charles Marye, at charles.c.marye.civ@mail.mil or (571) 372-0407.

If you are not satisfied with this action, you may petition the Appellate Authority, the Director of Administration, Office of the Secretary of Defense, by writing directly to the Freedom of Information Division, ATTN: Appeals Office, 1155 Defense Pentagon, Washington, D.C. 20301-1155; you may also submit your appeal electronically at the following link: <http://pal.whs.mil/palMain.aspx>. Your appeal should be postmarked within 60 calendar days of the date of this mail, should cite case number 16-F-0329, and should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

for Charles C. Marye

Stephanie L. Carr
Chief

Enclosure:
As stated

Dec. 16. 2015 3:58PM

Attorney General

No. 5404 P. 1



16-F-0329

**STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL**

DEREK SCHMIDT
ATTORNEY GENERAL

December 16, 2015

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

VIA FACSIMILE

FREEDOM OF INFORMATION ACT REQUEST

Stephanie Carr
FOIA Contact
OSD/JS FOIA Requester Service Center
Office of Freedom of Information
Office of the Secretary and Joint Staff
Department of Defense
1155 Defense Pentagon
Washington, DC 20301-1155
Fax: (571) 372-0500

Re: FOIA REQUEST

Dear Ms. Carr:

This is a request under the Freedom of Information Act (5 U.S.C. § 552, as amended).

By this letter the State of Kansas, by and through the Office of the Kansas Attorney General, hereby requests any and all documents (including any and all written or electronic correspondence or other records, financial records in any form, audiotapes, electronic records, videotapes, photographs, telephone messages, voice mail messages, e-mails, facsimiles, daily agendas and calendars, information about meetings and/or discussions, whether in-person or over the telephone, agendas, minutes and a list of participants for those meetings and/or discussions, and transcripts and notes of any such meetings and/or discussions) from December 26, 2013, to the date of this letter that discuss or in any way relate to:

- (a) the implementation of Executive Order 13492 or Executive Order 13493, of January 22, 2009, concerning the disposition of individuals detained at the Guantanamo Bay Naval Base and the closure of the detention facilities located there;
- (b) the transfer or potential transfer to the United States mainland of individuals currently detained at the Guantanamo Bay Naval Base;

Dec. 16, 2015 3:58PM Attorney General

No. 5404 P. 2

December 16, 2015

Page 2

- (c) site visits to military bases or detention facilities in Kansas or any other State as part of, or related to, an effort to find a facility to house individuals currently detained at the Guantanamo Bay Naval Base;
- (d) the modification or construction of any military base or federal or state-owned prison, penitentiary, or other detention facility for the purpose of housing individuals currently detained at the Guantanamo Bay Naval Base;
- (e) any assessment of the suitability of any location at Fort Leavenworth, Kansas, or elsewhere within the State of Kansas, as a site for potentially housing individuals currently detained at the Guantanamo Bay Naval Base;
- (f) surveys or questionnaires regarding potential transfer sites on the United States mainland for individuals currently detained at the Guantanamo Bay Naval Base;
- (g) any expenditures of funds related to (a) through (f), including any travel or personnel costs related to surveying potential transfer sites on the United States mainland for individuals currently detained at the Guantanamo Bay Naval Base;
- (h) the legal basis for any violation of the funding restrictions Congress has imposed. *See, e.g.,* National Defense Authorization Act for Fiscal Year 2014, Pub. L. 113-66, §§ 1033, 1034 (enacted Dec. 26, 2013); Consolidated Appropriations Act, 2014, Pub. L. 113-76, Div. B., §§ 528, 529 (enacted Jan. 15, 2014), extended through December 17, 2014, by Pub. L. 113-164, Pub. L. 113-202, and Pub. L. 113-203; Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113-235, Div. B §§ 528, 529 (enacted Dec. 16, 2014), extended through December 16, 2015, by Pub. L. 114-53 and Pub. L. 114-53; National Defense Authorization Act for Fiscal Year 2015, Pub. L. 113-291, §§ 1033, 1034 (enacted Dec. 19, 2014); National Defense Authorization Act for Fiscal Year 2016, Pub. L. 114-92, §§ 1031, 1032 (enacted Nov. 25, 2015).

Request for Public Interest Fee Waiver

We respectfully request that you waive any applicable fees since disclosure is in the public interest. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 32 C.F.R. §§ 286.28(d)(3)(i)(A)-(D), 1900.13(b)(2). Specifically, the records requested are “likely to contribute significantly to public understanding of the operations or activities of the government” and the State has no commercial interest in their disclosure—the State’s interest is to facilitate and promote the public interest. *See Id.*

FOIA’s fee waiver provision imposes a non-discretionary duty to provide documents without any charge if the disclosed information satisfies a two-prong test. *See* 5 U.S.C. § 552(a)(4)(A)(iii) (“Documents *shall* be furnished without any charge or at a [reduced] charge . . .”). First, the disclosed information must be likely to significantly contribute to public understanding of governmental operations and activities. 5 U.S.C. § 552(a)(4)(A)(iii). Second, the disclosed

Dec. 16, 2015 3:59PM Attorney General

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December 16, 2015
Page 3

information cannot be primarily in the commercial interests of the requester. *Id.* This test is intended to be liberally construed in favor of waivers for noncommercial requesters. *Forest Guardians v. DOI*, 416 F.3d 1173, 1178 (10th Cir. 2005). It "should not be interpreted to allow federal agencies to set up roadblocks to prevent noncommercial entities from receiving a fee waiver." *W. Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1039 (D. Idaho 2004).

The President has stated that he intends to close the detention facility at the Guantanamo Bay Naval Base and bring to the United States mainland the detainees housed there. It has been widely reported that U.S. Disciplinary Barracks at Fort Leavenworth is one of the sites that a team led by a U.S. Department of Defense official has surveyed as a possible location for housing Guantanamo detainees. This is a matter of tremendous public concern, not just in Leavenworth, Kansas, but across the State and the Country. The intention of FOIA is to "ensure an informed citizenry, vital to the functioning of a democratic society, needed to . . . hold the governors accountable to the governed." *Natural Res. Def. Council v. EPA*, 581 F. Supp. 2d 491, 496 (S.D.N.Y. 2008) (quoting *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978)). That is precisely how the State of Kansas intends to use the records it seeks.

Specifically, the State of Kansas intends to inform all residents of Kansas and the United States regarding the plan to bring Guantanamo detainees to the United States mainland. It will do so by making the information available on the website of the Office of the Kansas Attorney General and in other manners determined to be in the public interest. The State of Kansas will also use the records to educate state and federal lawmakers regarding the activities of the Department of Defense, Department of the Army, Department of the Navy, and the Department of Justice in connection with the potential transfer of individuals detained at the Guantanamo Bay Naval Base to a facility or facilities located on the United States mainland.

The records will provide invaluable information to these lawmakers as they consider future changes to Guantanamo Bay Naval Station and the effect those changes may have on the safety and security of all Americans as well as any potential future changes to, or in relation to, Fort Leavenworth, Kansas. The records will also significantly enhance the public's understanding of any planned operations and activities, and ensure that the public has the information necessary to determine whether the proposed transfer of military detainees is within the public interest.

The State has no intention of using the information disclosed for financial gain. If for some reason the fee waiver request is denied, while reserving any right to appeal such a decision, the State of Kansas is willing to pay \$100.00 to cover costs of document search and duplication.

In the event that access to any portion of the requested records is denied, FOIA requires that that the portions of a requested file that are not exempted from release must be disclosed. See 5 U.S.C. § 552(b). We therefore request that the State of Kansas be provided with all non-exempt portions that are reasonably segregable from exempt material. See *id.* We further request that you describe the deleted material in detail and specify the statutory basis for the denial as well as your reasons for believing that the alleged statutory justification applies in this instance. Please separately state your reasons for not invoking your discretionary powers to release the requested

Dec. 16. 2015 3:59PM Attorney General

No. 5404 P. 4

December 16, 2015

Page 4

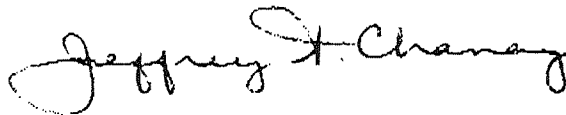
documents in the public interest. Such statements will be helpful in deciding whether to appeal an adverse determination and in formulating arguments in case an appeal is taken.

We request that access to the requested records be granted within the statutory twenty working days from the date of receipt. *See* 5 U.S.C. § 552(a)(6)(A); 32 C.F.R. § 286.4(d)(1). Failure to respond in a timely manner shall be viewed as a denial of this request and the requesters may immediately file an administrative appeal. *See* 5 U.S.C. § 552(a)(6)(C)(i).

Thank you in advance for your prompt reply. Should you need to talk by telephone as to any matter related to this request, I may be reached at (785) 296-2215.

Sincerely,

OFFICE OF KANSAS ATTORNEY GENERAL
DEREK SCHMIDT

A handwritten signature in cursive script, reading "Jeffrey A. Chanay".

Jeffrey A. Chanay
Chief Deputy Attorney General

Department of Defense
Office Of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

Mr. Jeffrey Chanay
State of Kansas, Office of the Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, KS 66612-1597



66612159799



FIRST CLASS

Carr, Stephanie
CT-15-010515

RECEIVED
DEC 28 2015
BY: *ST*

Exhibit C

Clark, Bryan

From: Marye, Charles C CIV WHS ESD (US) [charles.c.marye.civ@mail.mil]
Sent: Tuesday, February 09, 2016 11:59 AM
To: Clark, Bryan
Cc: Chanay, Jeff
Subject: RE: [Non-DoD Source] RE: FOIA 16-F-0329 Clarification Request

Mr. Clark,

Thank you for agreeing to narrow the scope of the request for items (a) and (g).

V/R

Charles Marye
OSD/JS Office of Freedom of Information
(571) 372-0407

NIPR: charles.c.marye.civ@mail.mil
SIPR: charles.c.marye.civ@mail.smil.mil

-----Original Message-----

From: Clark, Bryan [<mailto:Bryan.Clark@ag.ks.gov>]
Sent: Monday, February 08, 2016 10:17 AM
To: Marye, Charles C CIV WHS ESD (US)
Cc: Chanay, Jeff
Subject: [Non-DoD Source] RE: FOIA 16-F-0329 Clarification Request

All active links contained in this email were disabled. Please verify the identity of the sender, and confirm the authenticity of all links contained within the message prior to copying and pasting the address to a Web browser.

Mr. Marye:

Thank you for your response to our FOIA request. We are happy to work with you to narrow the scope of our request. Except for a slight change to the wording of your proposed change to item (a), we accept your proposal for narrowing our request. Specifically, we agree to narrow items (a) and (g) in our request as follows:

1. Item (a) is amended to request any materials, including but not limited to any and all documents (as described in our request dated December 16, 2015, attached), from December 26, 2013 to December 16, 2015, that relate to the relocation or possible relocation of individuals detained at the Guantanamo Bay Naval Base ("GTMO") to the State of Kansas due to closure of the detention facilities at GTMO.

2. With respect to item (g), we agree to re-scope our request as you set out in item 2. Specifically, OSD will prepare a document that lists the following information as it applies to the survey of potential GTMO detainee transfer sites on the United States mainland: the location of such surveys as well as the total cost of travel, per diem, and incidental expenses for all Department of Defense personnel conducting these surveys.

Thank you for your attention to our request. Please let us know if you have any additional questions.

Sincerely,

Bryan Clark

Bryan C. Clark
Assistant Solicitor General
Office of Kansas Attorney General Derek Schmidt
120 SW 10th Avenue, 3rd Floor
Topeka, KS 66612-1597
(785)368-7020 Phone
(785)291-3767 Fax
Bryan.Clark@ag.ks.gov
Caution-www.ag.ks.gov

-----Original Message-----

From: Marye, Charles C CIV WHS ESD (US) [Caution-<mailto:charles.c.marye.civ@mail.mil>]
Sent: Thursday, January 14, 2016 11:02 AM
To: Chanay, Jeff
Subject: FOIA 16-F-0329 Clarification Request

Dear Mr. Chanay:

After carefully reviewing your request, the office conducting the search for responsive records has asked that you narrow the scope of your request. We need your help, please, to work with us on narrowing your request and ask that you consider amending items (a) and (g) of your request to search for the following:

1. (a) Any materials from December 26, 2013 to December 16, 2015 that discuss the relocation of individuals detained at the Guantanamo Bay Naval Base ("GTMO") to the State of Kansas due to closure of the detention facilities at GTMO; and
2. In order to respond to the request in paragraph (g) as it is currently drafted, OSD would have to engage in an onerous search and review process that could yield a substantial amount of data, much of which might be redacted or withheld in full under applicable FOIA exemptions. The process would be time consuming and might yield material that is cumbersome for you (the requestor) to sort through and use. To save time and satisfy your request, we propose the following:

OSD will prepare a document that lists the following information as it applies to the survey of potential GTMO detainee transfer sites on the United States mainland: the location of such surveys as well as the total cost of travel, per diem, and incidental expenses for all Department of Defense personnel conducting these surveys.

Please note that re-scoping your request will take less time to conduct a search and provide a response to you. Please respond to this e-mail by February 10, 2016 with respect to your agreement to narrowing your request as set out above.

If you have any additional questions, please contact me, Charles Marye, as the Action Officer assigned to your request at charles.c.marye.civ@mail.mil or (571) 372-0407.

Sincerely,

Charles Marye
For Adrienne Santos, on behalf of
Stephanie L. Carr
Chief, Office of Freedom of Information
OSD/JS FOIA Requester Service Center

(571) 372-0407

NIPR: charles.c.marye.civ@mail.mil

SIPR: charles.c.marye.civ@mail.smil.mil

Exhibit D

Clark, Bryan

From: Marye, Charles C CIV WHS ESD (US) [charles.c.marye.civ@mail.mil]
Sent: Thursday, April 21, 2016 2:16 PM
To: Clark, Bryan
Subject: FOIA 16-F-0329 Revised Estimated Completion Date and Status Update
Attachments: 16F0329_REQUEST.pdf; 16F0329_REQUEST-items-A_&G_rescope.pdf

Mr. Clark,

I received your voice mail requesting an update on the status of your FOIA case 16-F-0329. Copies of your request and the amendment to items A and G are attached. When we had last spoken in March I had provided an Estimated Completion Date (EDC) of 04/15/2016. This date was based upon information provided by the component office conducting the search. I also stressed that this was only an estimate and was subject to change. When we had spoken you had also expressed an interest in item G in particular. I passed this information to the component office who in turn has focused additional effort on item G. These efforts have paid off and the search is now beginning to enter the review stage for the component office. It has been determined at this time that additional coordination is required to process the records for your request.

Item G has been passed to my office for further coordination. We hope to be able to provide item G ahead of the remainder of your request, however it does require coordination with other agencies outside of this office. At the present time my component office has provided an updated estimated completion date of 11/15/2016 for the remainder of your request. We should be able to provide Item G ahead of this date, however I cannot provide a firm date for item G at this time.

Please note all documents are reviewed before we respond. Further note the unusual circumstances concerning your cases are: (a) the need to search for and collect records from a facility geographically separated from this Office; (b) the potential volume of records responsive to your request; and (c) the need for consultation with one or more other agencies or DoD components having a substantial interest in either the determination or the subject matter of the records. These 3 factors do have an impact on the processing of your case. I appreciate your patience and understanding in this matter.

If you have any further questions, please contact me directly.

V/R

Charles Marye
OSD/JS Office of Freedom of Information
(571) 372-0407

NIPR: charles.c.marye.civ@mail.mil
SIPR: charles.c.marye.civ@mail.smil.mil

Exhibit E

Clark, Bryan

From: Clark, Bryan
Sent: Wednesday, April 27, 2016 9:34 AM
To: charles.c.marye.civ@mail.mil
Subject: RE: FOIA 16-F-0329 Revised Estimated Completion Date and Status Update

Mr. Marye:

Thank you for the update on the status of State of Kansas's FOIA request (16-F-0329). On January 14, 2016, the State agreed to OSD's proposal that the State narrow the scope of its request. In particular, OSD proposed that it respond to paragraph (g) of the State's request by "prepar[ing] a document that lists the following information as it applies to the survey of potential GTMO detainee transfer sites on the United States mainland: the location of such surveys as well as the total cost of travel, per diem, and incidental expenses for all Department of Defense personnel conducting these surveys." The State agreed to narrow its request accordingly in order to receive a more timely response.

On March 2, 2016, you provided an estimated completion date of April 15, 2016. The State did not receive a response by April 15, 2016. On April 21, 2016, I left you a voice mail requesting an update on the status of the State's request. Later that day you responded by e-mail, stating that the estimated completion date had been extended by seven months -- from April 15, 2016 to November 15, 2016. You stated that OSD's response to the re-scoped paragraph (g) had been sent to your office for further coordination, and that you hope to provide the response to paragraph (g) ahead of the remainder of our request, but you did not provide an estimated completion date for that discrete part of our request.

The reasons given for the seven-month delay are: (a) the need to search for and collect records from a facility geographically separated from this Office; (b) the potential volume of records responsive to your request; and (c) the need for consultation with one or more other agencies or DoD components having a substantial interest in either the determination or the subject matter of the records.

Because OSD's response to paragraph (g) has been completed by OSD and only needs "further coordination," it is unclear how any of these circumstances provide reasons for delaying OSD's response to the State's re-scoped paragraph (g). The State narrowed its request with respect to paragraph (g) in order to receive a timely response. The State respectfully requests that it receive OSD's response to paragraph (g), as re-scoped, on or before May 15, 2016. No unusual circumstances would support delay beyond that time.

The State also requests more specific reasons for why the remainder of its request will take an additional seven months to complete.

Please contact me if you would like to discuss further the State's alternative time frame for processing OSD's response to paragraph (g) of the State's request, or the State's request for more specific reasons for the delay in responding to the remainder of the State's request.

Best,

Bryan Clark

Bryan C. Clark
Assistant Solicitor General
Office of Kansas Attorney General Derek Schmidt
120 SW 10th Avenue, 3rd Floor

Topeka, KS 66612-1597
(785)368-7020 Phone
(785)291-3767 Fax
Bryan.Clark@ag.ks.gov
www.ag.ks.gov

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-----Original Message-----

From: Marye, Charles C CIV WHS ESD (US) [mailto:charles.c.marye.civ@mail.mil]
Sent: Thursday, April 21, 2016 2:16 PM
To: Clark, Bryan
Subject: FOIA 16-F-0329 Revised Estimated Completion Date and Status Update

Mr. Clark,

I received your voice mail requesting an update on the status of your FOIA case 16-F-0329. Copies of your request and the amendment to items A and G are attached. When we had last spoken in March I had provided an Estimated Completion Date (EDC) of 04/15/2016. This date was based upon information provided by the component office conducting the search. I also stressed that this was only an estimate and was subject to change. When we had spoken you had also expressed an interest in item G in particular. I passed this information to the component office who in turn has focused additional effort on item G. These efforts have paid off and the search is now beginning to enter the review stage for the component office. It has been determined at this time that additional coordination is required to process the records for your request.

Item G has been passed to my office for further coordination. We hope to be able to provide item G ahead of the remainder of your request, however it does require coordination with other agencies outside of this office. At the present time my component office has provided an updated estimated completion date of 11/15/2016 for the remainder of your request. We should be able to provide Item G ahead of this date, however I cannot provide a firm date for item G at this time.

Please note all documents are reviewed before we respond. Further note the unusual circumstances concerning your cases are: (a) the need to search for and collect records from a facility geographically separated from this Office; (b) the potential volume of records responsive to your request; and (c) the need for consultation with one or more other agencies or DoD components having a substantial interest in either the determination or the subject matter of the records. These 3 factors do have an impact on the processing of your case. I appreciate your patience and understanding in this matter.

If you have any further questions, please contact me directly.

V/R

Charles Marye
OSD/JS Office of Freedom of Information
(571) 372-0407

NIPR: charles.c.marye.civ@mail.mil

SIPR: charles.c.marye.civ@mail.smil.mil